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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/785,540 | 02/24/2004 | Charles Michael Lyons | LYONS-BRAKHAGE | 6840 |

7590 12/09/2005
RODNEY D. BRAKHAGE
#22 WINDSOR CIRCLE
STILLWATER, OK 74074

EXAMINER

DOOLEY, JAMES C

ART UNIT PAPER NUMBER

3634

DATE MAILED: 12/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,540

Applicant(s)

LYONS ET AL.

Examiner

James C. Dooley

Art Unit

3634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 2/24/2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Applicant has cited MPEP 707.07(j) and requested the examiner to provide draft suggestions on any patentable subject matter. Suggestions follow the claim rejections in the comments section.

Information Disclosure Statement

The information disclosure statement filed 2/24/2004 fails to comply with 37 CFR 1.98(a)(2), which requires a legible copy of each cited foreign patent document; each non-patent literature publication or that portion which caused it to be listed; and all other information or that portion which caused it to be listed. It has been placed in the application file, but the information referred to therein has not been considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "said guides" in line 5. There is insufficient antecedent basis for this limitation in the claim. Applicant previously names the guides, "a means for guiding".

Claim 4 recites the limitation "said stop" in line 6. There is insufficient antecedent basis for this limitation in the claim. Applicant previous names the stop, "a vertical arm".

Claims 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 4 Applicant claims a means of leverage. In Claims 5 applicant replaces the means of leverage. It is unclear if other claims dependent from claim 4 include or exclude the means of leverage.

Claims 10 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 9 Applicant claims a means of leverage. In Claims 10 applicant replaces the means of leverage. It is unclear if other claims dependent from claim 9 include or exclude the means of leverage.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 are rejected under 35 U.S.C. 102(b) as being anticipated by Henderson et al. (US patent number 618,507). Henderson et al. disclose a structure which provides a method of pushing and clamping a motorcycle's wheel for parking or transporting.

A bike is loaded into the holder provided by Henderson et al. using pushing force supplied by the user and in no way originating from the weight of the bike. When the

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front tire of a bike is pushed into clamp D2, a spring (F) connected to a lever (D) supplies a reaction force lowering the upper clamp D1 and locking the clamp in place. It is clear from the figures that the clamp D2 would function without the need of extended lever D and upper clamp D1. Although it is not the spring which holds the bike in place it is clear that the spring provides a force which pushes on the bike and, by means of the lock connected to the spring, the bike is held in place.

Claims 4-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Kraus (US patent number 6,241,104). Kraus discloses a motorcycle stand featuring:

- a. A means for guiding a bike into the stand (side flanges on stop 6)
- b. A vertical arm to stop the motorcycle (6)
- c. A means to stabilize the stand (3A, 3P)
- d. A pivotable shoe (11)
- e. Leverage means connect to the shoe (15)
- f. A plurality of means to press against the leverage (27L, 27R)
- g. A device to release the force on the leverage (29L, 29R)
- h. A means to overcome force and reset the shoe (34)
- i. A means to automatically release the shoe (27)
- j. A floor plate (4) connected to the pair of guide rails (2)
- k. A trip lever (34)
- l. A cocking piece (12)

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The lever (34) of Kraus serves the function of releasing the lock (29) so that the bike can be removed from the stand. The means by which the shoe is automatically released is provided by the springs (27). It is clear that once the wheel pass over a predetermined location the lever would be released and assist the user in pushing the bike into the stand.

The cocked ready position is seen as the position when the locking pins (29) are pulled outward from the apertures in supports (26). So, ramp (12) is pressed downward from the weight of the bike the shoe (11) is ready to receive the wheel.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Henderson et al. Applicant has stated that using urethane-based coating is well known in truck bed linings. Therefor, it would have been obvious to anyone with ordinary skill in the art at the time of the invention to use a urethane-based coating on any object which was intended to be mounted in a truck bed. The motivation would be to prevent gouging of the truck bed.

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Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus.

Applicant has stated that using urethane-based coating is well known in truck bed linings. Therefor it would have been obvious to anyone with ordinary skill in the art at the time of the invention to use a urethane-based coating on any object which is intended to be mounted in a truck bed. The motivation would be to prevent gouging of the truck bed.

Claims 9-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kraus as applied to claims 4-7 and further in view of Llyod. Kraus discloses a motorcycle stand having the spring and lever holding means as advanced above. Kraus does not disclose the spring being a gas operated air spring. Llyod teaches a bike stand having an air spring 38 which provides a force on a lever (26) to hold a wheel (24). Accordingly, it would have been obvious to one with ordinary skill in the art at the time of the invention to modify the spring disclosed by Kraus to include an air spring. Air springs are known to offer higher forces in smaller packages. Therefore the motivation would be to increase the stability of the bike in the stand without increasing the size of the rack.

Applicant has stated that using urethane-based coating is well known in truck bed linings. Therefor it would have been obvious to anyone with ordinary skill in the art at the time of the invention to use a urethane-based coating on any object which was intended to be mounted in a truck bed. The motivation would be to prevent gouging of the truck bed.

Comments

It is in the opinion of the office that the invention submitted by Applicant is patentable.

The following suggestions are put forth in order to expedite prosecution.

Claims 1-3 should be cancelled. The method disclosed by these claims is broad enough so that a variety of configurations could complete these steps. The rejection based on the invention of Henderson demonstrates this breadth. The office has refrained from issuing a restriction requirement in an attempt to expedite prosecution. Applicant is referred to MPEP 806.05(h) wherein it is stated,

A product and a process of using the product can be shown to be distinct inventions if either or both of the following can be shown: (A) the process of using as claimed can be practiced by another materially different product; ...

The examiner has demonstrated with the Henderson patent that the process of using the product as claimed can be performed by another materially different product. Therefore a restriction would be proper, and will be used in future office actions if these claims are not cancelled.

The office sees two novel features of Applicants invention which when incorporated in the claims would demand patentability.

First, the prior art used in this application, Kraus, uses the weight of the bike to push down on ramp 12. The storage rack of Applicant is specifically described in the disclosure not to require the weight of the motorcycle for securement.

Second, the trip lever of Kraus functions opposite to the function of Applicant. Namely the trip lever of Kraus, allows for releasing the bike, while the trip lever of Applicant allows for retaining the bike.

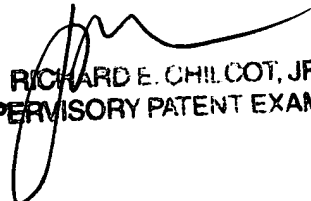
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James C. Dooley whose telephone number is 571-2721679. The examiner can normally be reached on M-F 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

12/06/2005


RICHARD E. CHILCOT, JR.
SUPERVISORY PATENT EXAMINER